Supreme Court of the United States

October Term, 1964

No.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

TABLE OF CONTENTS

	PAGE
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes, Federal Rules and Laws Involved	3
Statement of the Case	3
Reasons for Granting the Writ	7
Conclusion	9

APPENDIX

Opinion of the United States Court of Appeals	A-1
Judgment of the United States Court of Appeals	A-6
Statutes	A-8
Constitutional Provisions Involved	A-10

AUTHORITIES CITED

Cases

Bartchy v. U.S., 319 U.S. 484, 63 S. Ct. 1206, 87 L. Ed. 1534	9
Beck v. U.S., 305 F. 2d 595; 9, L. Ed. 2d 123	9
Dege v. United States, 364 U.S. 51 (decided June 27, 1960)	4
Dennis v. U.S., C.A. Colo., 1962, 302 F. 2d 5	8
Gatlin v. U.S., C.A.D.C., 1963, 326 F. 2d 666	7-8

PAGE

Hoopengarner v. U.S., C.A. Mich., 1959, 270 F. 2d 465 9
Ingram v. U.S., 360 U.S. 672 8
Jones v. Conn., 99 NE 2d 456, 827 Mass. 491 6
Mallory v. U.S., App. D.C., 1957, 77 S. Ct. 1356, 354 U.S. 449 8
Marshall v. United States (Slip Opinion, D.C. Cir. June 30th, 1964) 6, 8
Rabinowitz v. U.S., C.A. Minn., 1963, 324 F. 2d 775 .. 8
Staples v. U.S., C.A. Fla., 1963, 320 2d 817 8
Stewart v. U.S., 1961, 81 S. Ct. 341, 366 U.S. 1, 6 L. Ed. 2d 84 7
U.S. v. Apex Distributing Co., C.A. Wash., 1959, 270 F. 2d 747 9
U.S. v. Harris, 261 F. 2d 792 9
U.S. v. Lustman, 258 F. 2d 475, cert. denied, 79 S. Ct. 118 (1958) 8
U.S. v. Pennix, C.A.N.C. 1963, 313 F. 2d 524 7
U.S. v. Sawyers, D.C. Cal., 1960, 186 F. Supp. 264 9

Statutes

18 U.S.C.A. § 371 ..... 1, 3, 4
28 U.S.C.A. § 1254(1) 2
18 U.S.C.A. § 1341 ..... 1, 3, 4
18 U.S.C.A. § 1343 ..... 1, 3, 4

United States Constitution

Fourth Amendment 3
Fifth Amendment 2, 3, 7, 8
Sixth Amendment 2, 3, 6

Miscellaneous

Federal Rules of Criminal Procedure:
Rule 29 3
Rule 48(b) 2, 3, 6

IN THE

Supreme Court of the United States

October Term, 1964

No.

KARL HALLER and MARIA HALLER,

Petitioners,

—v.—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioners, KARL HALLER and MARIA HALLER, respectively pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in this case on July 7, 1964, affirming the jury's verdict for convictions in the Southern District of New York for mail fraud, fraud by wire, and conspiracy, 18 U.S.C.A. Sections 371, 1341 and 1343, and from sentences of one year's imprisonment imposed by the Honorable Thomas F. Murphy, District Judge of the United States District Court for the Southern District of New York.

Opinions Below

The opinions of the Federal District Court (Appellants' Appendix, pp. 50-51, 55), written by District Judge Thomas F. Murphy, denying both the initial motion and the amended

motion to dismiss the action for want of prosecution pursuant to the United States Constitution, the Sixth Amendment thereof, and Rule 48(b) of the Federal Rules of Criminal Procedure thereof, are unreported. The opinion of the Court of Appeals, printed in the Appendix hereto, Appendix A, *infra*, pp. , , *et seq.*, is not yet reported.

Jurisdiction

The judgment of the Court of Appeals was entered on July 7, 1964 (Appendix B, pp. , *et seq.*). Upon application duly made for an extension of time in which to file a petition for a writ of certiorari, Mr. Justice Potter Stewart, on August 5, 1964, ordered that the time for filing a petition for writ of certiorari be extended to and including September 5, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Questions Presented

1. Whether the Postal Agents without a warrant of arrest, were authorized to arrest and take into custody the appellants herein, or, whether this arrest was a subterfuge and a pretext to hinder the lawful business of the appellants?

2. Whether there was a reasonable ground for the exclusion of certain evidence which was allowed into the record by the trial judge over the appellants' objections denying them due process of law under the Fifth Amendment, and whether or not the appellants received a fair and impartial trial?

3. Whether the Court of Appeals erred in affirming the lower court's ruling depriving the appellants of their constitutional rights under the Sixth Amendment, and under Rule 48(b) of the Federal Rules of Criminal Procedure?

4. Whether the trial judge erred in the denial of the appellants' motion for a judgment of acquittal notwithstanding the verdict, or in the alternative for a new trial under Rule 29 of the Federal Rules of Criminal Procedure?

5. Whether the trial judge erred in his charge to the jury in failing properly to instruct the jury that charges are not to be predicated by piling inference upon inference in order to grant the appellants a fair and impartial trial, or whether the failure of the trial judge to instruct the jury on this important element was prejudicial as to the appellants' rights and reversible error?

Statutes, Federal Rules and Laws Involved

The pertinent portions of the Fourth, Fifth and Sixth Amendments to the United States Constitution (Appendix D, at p.), and Federal Statutes, Title 18 U.S.C.A. 371, 1341 and 1343 (Appendix C, *infra*, p.) and Rules 48(b) and 29 of the Federal Rules of Criminal Procedure (Appendix D, *infra*, p.).

Statement of the Case

The appellants, Karl Haller and Maria Haller, were arrested on December 8, 1958, by postal agents, without a warrant of arrest, at the offices of Rocco Moles, Esq., an attorney representing A. Cavaglieri Inc., of Lindenhurst, Long Island, New York, where Karl Haller had gone with

his wife to execute a contract for the lease and option to purchase the land and buildings of the aforementioned to be used for the manufacturing purposes intended by the petitioner, Karl Haller. That the petitioner, Karl Haller, was prevented from executing any contract or otherwise attending to his business, and both he and his wife were taken from the said premises to the Southern District Court House where they were later arraigned. Bail was set at $2500, for petitioner, Karl Haller, and co-petitioner, Maria Haller, was released on her own recognizance.

It is submitted that on November 14, 1958, an indictment was filed against Karl and Maria Haller, in the Southern District of New York, charging seven counts, counts one through four charging mail fraud (18 U.S.C.A. §1341); counts five and six charging fraud by wire (18 U.S.C.A. §1343); the seventh count charging a conspiracy to violate both of these provisions (18 U.S.C.A. §371).

On January 13, 1959, petitioners filed a motion to dismiss the seventh count of the indictment, coupled with a motion for the inspection of the Grand Jury minutes and a motion for a bill of particulars.

On July 11, 1960, the Honorable Frederick V. P. Bryan, denied petitioners' motion to dismiss the seventh count of the indictment after the motion was held in abeyance for eighteen (18) months pending the outcome of a case before the United States Supreme Court, *Dege* v. *United States*, 364 U.S. 51 (decided June 27, 1960); and further denied the motion for the inspection of the Grand Jury minutes. The motion for a Bill of Particulars was granted as to five (5) items only. The Bill of Particulars was not served or filed by the U.S. Attorney until some three (3) years later,

that in and of itself controverts any claim by the United States Attorney's office that they were ready to proceed to trial during that period. The delay in providing the Bill of Particulars was unreasonable and was not due to any adjournment by the petitioners herein

To controvert the affidavit of Michael S. Fawer, a special assistant United States Attorney in the office of Robert N. Morgenthau, U.S. Attorney, which was submitted in opposition to petitioners' motion to dismiss wherein he set forth that the petitioners were not represented by counsel on May 24, 1961, June 26, 1961, June 28, 1961, and September 18, 1961, and hence were not ready to proceed to trial, we submit that the affidavit of William T. Mulcahy of the law firm of McAloon and Hirschberg states unequivocally that he or another member of his law firm were in court on each of the dates set forth representing the petitioners and that as early as April 25, 1961, the co-petitioner, Maria Haller, spoke out in open court and stated that she wanted to go on trial (App. pp. 37, 38 and 39).

That on November 14, 1961, co-petitioner, Maria Haller, was illegally incarcerated for a period of eleven (11) weeks on an alleged bad check charge which check had some nine months sooner been replaced, the complainant paid in full, and the charge dismissed. That due to co-petitioner, Maria Haller's inability to appear, the Honorable Judge Levet, on November 14, 1961, (although she could have been in court at the request of the United States Attorney's office) her bail was set at $5,000, and on January 17, 1962, the said bail was reduced to $1,000. After said date and for more than a period of seventeen (17) months thereafter, the government made no effort to prosecute the case.

The trial judge at the inception of the trial stated in open court that he had on June 15, 1963, set down the trial date for September 30, 1963, the aforementioned U.S. Attorney, Michael S. Fawer, stated in his affidavit that the same trial date had been set by the court on June 17, 1963, and that on the same date the co-petitioner, Maria Haller, filed a motion to dismiss for want of prosecution pursuant to the Sixth Amendment of the United States Constitution and Rule 48(b) of the Federal Rules of Criminal Procedure. This motion as well as the amended motion for the same relief were denied on the basis that the right to a speedy trial was waived. Under the Second Circuit rule the period begins with the defendant's first clear demand and ends with the first day of trial. The lower court arbitrarily fixed the period from June 17, 1963 to September 30, 1963. Under *Marshall* v. *United States* (D.C. Cir., June 30, 1964) the Court of Appeals for the District of Columbia, considered the whole time from the indictment to trial and concluded that the defendant had been denied a speedy trial. They found the period of thirteen months excessive.

It is submitted that the evidence which was submitted during the trial with respect to business operations of the petitioners both in California and New Orleans were in no way remotely connected with the activities which were the subject of this particular indictment and the failure to exclude this extraneous testimony over the petitioners' objection prejudiced the petitioners' rights and should not have been admitted into evidence in this case. A witness cannot be asked on cross-examination, in order to affect his credibility about his part in transactions irrelevant to the issues on trial (*Jones* v. *Conn.*, 1951, 99 N.E. 2nd 456;

827 Mass. 491; *U.S.* v. *Pennix*, C.A.N.C., 1963, 313 F. 2d 524).

The aim of the requirement of due process is not to exclude presumptively false evidence, but to prevent fundamental unfairness in the use of evidence and to secure to all persons equal and impartial justice under the law. Parts of the record showing error cannot be ignored on a mere conjecture that the jury might not have heard or relied upon the testimony which that part of the record represents (*Stewart* v. *U.S.*, 1961, 81 S. Ct. 341, 366 U.S. 1, 6 L. Ed. 2d 84).

Through the admission of irrelevant and extraneous evidence, the trial judge inadvertently created a hostile atmosphere which was detrimental to the rights of the petitioners herein and highly prejudicial, and by reason thereof the petitioners did not receive a fair and impartial trial, in violation of the Fifth Amendment.

The petitioners were further prejudiced by the admission of evidence not material to the issues at hand and failure properly to charge the jury that the charges could not be predicated by piling an inference upon an inference. Even with the Court of Appeals opinion, the inference is inescapable that the affirmance was based upon irrelevant evidence which was deduced from the beclouded issues on the record, relative to the operations in California.

Reasons for Granting Writ

1. The decision below should be reviewed because the constitutional issues raised herein were completely disregarded by postal agents all in violation of the Fourth Amendment of the Constitution (See: *Gatlin* v. *U.S.*, C.A.

D.C., 1963, 326 F. 2nd 666; *Staples* v. *U.S.*, C.A. Fla., 1963, 320 F. 2nd 817; *Mallory* v. *U.S.*, App. D.C., 1957, 77 S. Ct. 1356, 354 U.S. 449).

2. The further constitutional issue raised by the violation of the Fifth Amendment to the Constitution makes this petition compelling. The lower court's complete disregard for the petitioners' rights is patently evident. The lower court's charge to the jury by the trial judge wherein he allows an inference on an inference to be predicated upon unrelated facts, instead of explaining to what degree such circumstance and inference therefrom could be utilized (See: *Ingram* v. *U.S.*, 360 U.S. 672). Under the law the gravamen of a conspiracy is an agreement to commit an unlawful act. The mere knowledge, approval or acquiescence in object or purpose of a conspiracy does not make one a conspirator (See: *Dennis* v. *U.S.*, C.A. Colo., 1962, 302 F. 2nd 5; *Rabinowitz* v. *U.S.*, C.A. Minn., 1963, 324 F. 2nd 775).

3. Again, testing the application of the Sixth Amendment in the crucible of legal strain, the decision in this proceeding is diametrically opposed to the principle enunciated in the matter of *Marshall* v. *United States* (Slip Opinion D.C. Cir.), decided June 30, 1964. It is a complete departure from the rule stated in the Second Circuit, in *U.S.* v. *Lustman*, 258 F. 2nd 475, cert. denied, 79 S. Ct. 118 (1958), wherein a person is said to have waived his right to a speedy trial unless the defendant makes a clear, unequivocal demand for a trial. On the other hand, the *Marshall* case, *supra*, decides unequivocally that a defendant is entitled to a speedy trial, and failure to provide the same for the defendant will be cause for dismissal of the indictment.

The question, therefore, presented by the case, is of great and recurring significance in the problem of speedy trials. The serious questions of public policy involved here and the effect of the decision in this proceeding, if unreversed, will continue disparity among the various Federal Circuits. It, therefore, becomes an appropriate question for the exercise of this Court's discretionary jurisdiction (*U.S.* v. *Apex Distributing Co.*, C.A. Wash., 1959, 270 F. 2nd 747; *Hoopengarner* v. *U.S.*, C.A. Mich. 1959, 270 F. 2nd 465; *U.S.* v. *Sawyers*, D.C. Cal., 1960, 186 F. Supp. 264). It can readily be ascertained that the Second Circuit is in conflict with a number of other Federal Circuits. The defense of good faith asserted by the petitioners to the charges was not properly considered as the jury charges omitted an adequate reference thereto, making petitioners at least entitled to a retrial by reason of the constitutional infringements of the petitioners' rights during the trial (*Beck* v. *U.S.*, 305 F. 2nd 595, 9 L. Ed. 2nd 123, 128; *U.S.* v. *Harris*, 261 F. 2nd 792; *Bartchy* v. *U.S.*, 319 U.S. 484, 63 S. Ct. 1206, 87 L. Ed. 1534).

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

CALLY & CALLY, ESQS.
by JAMES J. CALLY and T. W. D. DUKE
Attorneys for Petitioners
150 Broadway
New York 38, New York

APPENDIX A

Opinion of United States Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 339—September Term, 1963.

(Argued April 6, 1964 Decided July 7, 1964.)

Docket No. 28617

UNITED STATES OF AMERICA,

Appellee,

—v.—

KARL HALLER and MARIA HALLER,

Appellants.

Before:

LUMBARD, *Chief Judge,*
MOORE and SMITH, *Circuit Judges.*

Appeals from judgments of conviction by a jury for mail fraud, fraud by wire, and conspiracy, 18 U. S. C. §§1341, 1343, 371, entered in the United States District Court for the Southern District of New York, Thomas F. Murphy, *J.*

Affirmed.

CHARLES A. STILLMAN, Assistant U. S. Attorney, New York, N. Y. (Robert M. Morgenthau, United States Attorney for the Southern District of New York, and Peter Fleming, Jr., Assistant U. S. Attorney, New York, N. Y., on the brief), *for appellee.*

GEORGE J. KAMBUR, New Orleans, La. (Donovan, Leisure, Newton and Irvine, New York, N. Y., on the brief), *for appellants.*

LUMBARD, *Chief Judge:*

These appeals by Karl and Maria Haller from their convictions in the Southern District of New York for mail fraud, fraud by wire, and conspiracy, 18 U. S. C. §§1341, 1343 and 371, and from sentences of one year's imprisonment, raise three questions: (1) whether the proof was sufficient to support the convictions, (2) whether the defendants were denied their right to a speedy trial, and (3) whether the court should have granted a continuance to permit the defense to take the deposition of a foreign witness. We find ample proof to support the jury's verdict. As we find that the delay in trial was almost entirely at the behest of the defendants, and that the trial judge committed no error in refusing to grant a further continuance, we affirm the convictions.

The record contains ample evidence to support the convictions, as the jury could have found the facts to be as we now summarize them: The advertisement which Karl Haller placed in late August 1958 in the Staats Zeitung und

Herold, and which solicited private investment of from $5,000 to $10,000 in a businses venture, came through the mail to a fellow employee of Walter and Maria Roos. When the Rooses responded by mail the Hallers visited them and explained that Karl Haller wanted to open a candy factory in New York, that they already had a factory located on the Hudson River, that they were then operating a candy factory in Los Angeles but summer heat and transportation costs made shipments to New York impractical. They gave the Rooses a bag of candy which they said had come from the Los Angeles factory. The Hallers said they needed the money within two days and the Rooses withdrew $4,456 which they had in two savings banks and paid it to the Hallers on September 11, 1958. In return the Rooses received Karl Haller's promissory note and a contract written in German which provided they might withdraw their money after twelve months.

All of these representations and many more were false and known to the Hallers to be false. This was in large part confirmed by Karl Haller, who testified in his own behalf. He said that he did not know what had been done with the money, but that it had been given to his wife, never used for the business in which the Rooses thought they were investing, and never returned. Maria Haller did not testify.

The Hallers' subsequent evasions led the Rooses to complain to the postal inspectors. Finally, on December 8, 1958, when the Hallers appeared in Lindenhurst at an attorney's office to confer with one Cavaglieri with respect to renting, with an option to buy for $50,000, a factory Cavaglieri had used for manufacturing noodles and sauces, they

were met by postal inspectors who accompanied them to Manhattan where they were held to answer charges in an indictment which had been filed in the Southern District of New York on November 14.

The Hallers assert that they were denied their right to a speedy trial guaranteed by the Sixth Amendment. While it is true that almost five years elapsed before they were brought to trial, the postponements until June 1963 were had for good reasons and without objection on the part of the defendants, who at all times were enlarged on bail and, with the exception of a period of four months, were represented by counsel. It was only on June 17, 1963 when Judge Murphy set the case for trial on September 30 that Maria Haller moved for dismissal because she had not been granted a speedy trial.

In January 1959 motions had been made to dismiss the indictment which attacked the conspiracy count on the ground that husband and wife could not be co-conspirators. Decision was held in abeyance by Judge Bryan because the question was before the United States Supreme Court and he promptly denied the motion in July 1960 on the authority of *United States* v. *Dege*, 364 U. S. 51, decided June 27, 1960. Restored to the calendar in April 1961, the case was adjourned by consent five times until September 1961 when the defendants' counsel withdrew and several additional adjournments followed to permit the defendants to retain new counsel. One or both defendants failed to appear on one or more occasions and the court issued bench warrants for them. In January 1962, after bail had again been fixed for Karl Haller, the case was once more marked off the cal-

endar and it was not restored until June 1963 when Judge Murphy denied the motion to dismiss for failure to prosecute, citing *United States* v. *Lustman*, 258 F. 2d 475, cert. denied, 358 U. S. 880 (1958). Having been content to let the charges stand untried for almost five years, the defendants cannot now complain of prejudice because of the delay when it is altogether clear that they sought and welcomed the delay on the chance that they might never be brought to trial.

Nor was it error for Judge Murphy to refuse a continuance of the trial, sought by defense counsel on the morning of the day set for trial, in order to take the deposition of Cavaglieri, who had gone to Italy sometime in 1962. The defendants knew on June 17 that the trial would commence on September 30, ample time to secure the deposition. They had been represented by various counsel during the preceding years and they had as counsel in June 1963 the same counsel who represented them at trial. In any event their failure to procure Cavaglieri's deposition could not have prejudiced them as there was no issue as to anything concerning which he could have given testimony, namely, that the Hallers from some time in November 1958 had been in touch with him regarding his factory in Lindenhurst and that they went to a lawyer's office on December 8, 1958 to discuss the rental of the premises.

The other claims of error with respect to the charge and the admission of evidence are entirely without substance and merit no discussion.

The judgments of conviction are affirmed.

APPENDIX B

Judgment of United States Court of Appeals

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 7th day of July, one thousand nine hundred and sixty four.

Present:

HON. J. EDWARD LUMBARD,
Chief Judge.

HON. LEONARD P. MOORE,
HON. J. JOSEPH SMITH,
Circuit Judges.

UNITED STATES OF AMERICA,
Appellee,

—v—

KARL HALLER and MARIA HALLER,
Appellants.

Appeal from the United States District Court for the Southern District of New York.

Appendix B—Judgment of United States Court of Appeals

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of the said District Court be and hereby is affirmed.

A. DANIEL FUSARO
Clerk

APPENDIX C

Statutes

18 U.S.C.A. §371. Conspiracy to commit offense or to defraud United States.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

18 U.S.C.A. §1341. Frauds and Swindles.

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretense, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Post Office

Department, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

18 U.S.C.A. §1343. FRAUD BY WIRE, RADIO, OR TELEVISION.

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than $1,000 or imprisoned not more than five years or both.

APPENDIX D

Constitutional Provisions Involved

CONSTITUTION OF THE UNITED STATES:

"ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION

ARTICLE IV. The right of the People to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously

ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence."

Miscellaneous

FEDERAL RULES OF CRIMINAL PROCEDURE:

"Rule 48. DISMISSAL.

(b) BY COURT. If there is unnecessary delay in presenting the charge to a grand jury or in filing an information against a defendant who has been held to answer to the district court, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the indictment, information or complaint."

Rule 29. MOTION FOR ACQUITTAL.

(a) Motion for Judgment of Acquittal. Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment or information after the evidence of either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the government is not granted, the defendant may offer evidence without having reserved the right.

(b) Reservation of Decision on Motion. If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict. If the motion is denied and the case is submitted to the jury, the motion may be renewed within 5 days after the jury is discharged and may include in the alternative a motion for a new trial. If a verdict of guilty is returned the court may on such motion set aside the verdict and order a new trial or enter judgment of acquittal. If no verdict is returned the court may order a new trial or enter judgment of acquittal.